

No. 1599

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**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

A. J. GODDARD, AS GENERAL RECEIVER OF THE  
PROPERTY OF THE DUWAMISH MILL COMPANY  
(a Corporation),  
Plaintiff in Error,

vs.

THE CASUALTY COMPANY OF AMERICA (A  
CORPORATION),  
Defendant in Error.

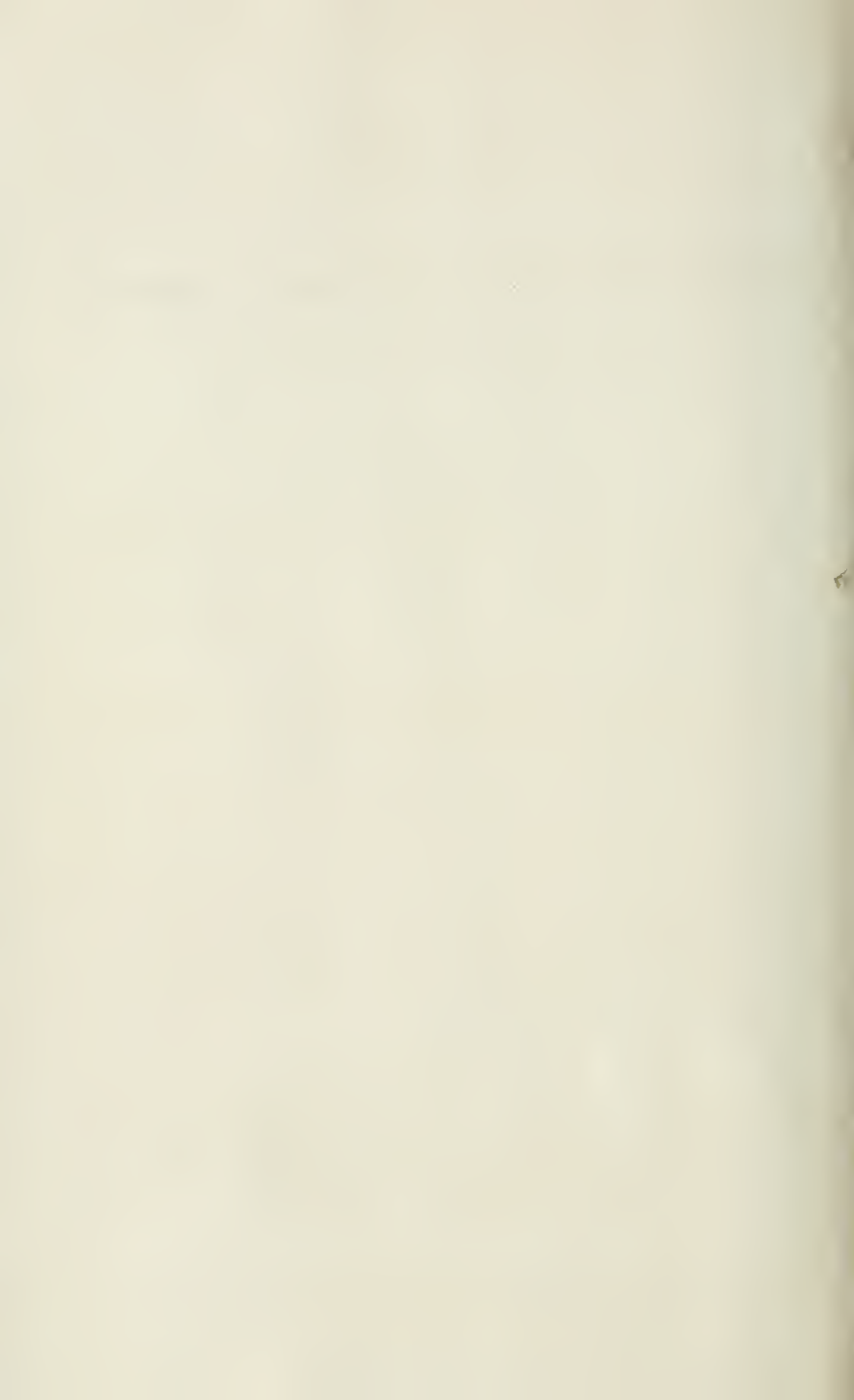
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**TRANSCRIPT OF RECORD.**

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Upon Writ of Error to the United States Circuit  
Court for the Western District of Wash-  
ington, Northern Division.

**FILED**



No. 1599

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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A. J. GODDARD, AS GENERAL RECEIVER OF THE  
PROPERTY OF THE DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff in Error,

VS.

THE CASUALTY COMPANY OF AMERICA (A  
CORPORATION),

Defendant in Error.

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## TRANSCRIPT OF RECORD.

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Upon Writ of Error to the United States Circuit  
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*In the Circuit Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Order Extending Time to Prepare and Forward  
Transcript.**

Now, on this day it is ordered that the time within which the Clerk of this Court shall prepare and transmit to the Circuit Court of Appeals the transcript of the record on appeal in this cause be, and the same is hereby, extended for 20 days, to wit, until the 30th day of April, 1908.

Dated this April 6th, 1908.

C. H. HANFORD,

Judge.

[Endorsed]: No. 1638. In the Circuit Court of the United States for the Western District of Washington. A. J. Goddard, as General Receiver of the Property of the Duwamish Mill Company, a Corporation, vs. Casualty Company of America, a Corporation. Order Extending Time to Prepare and Forward Transcript. Filed in the U. S. Circuit

Court, Western Dist. of Washington. Apr. 6, 1908.  
A. Reeves Ayres, Clerk. A. N. Moore, Dep.

No. 1599. United States Circuit Court of Appeals  
for the Ninth Circuit. Filed Apr. 23, 1908. F. D.  
Monckton, Clerk. Re filed May 1, 1908. F. D.  
Monckton, Clerk.

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*In the Circuit Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff and Plaintiff in Error,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant and Defendant in Error.

**Names and Addresses of Counsel.**

VINCE H. FABEN, Mutual Life Building, Seattle,  
Wash., and

POE & KELLERAN, Mutual Life Building, Seattle,  
Washington,

Attorneys for Plaintiff and Plaintiff in Error.

KERR & McCORD, Mutual Life Building, Seattle,  
Wash., and

JOHN P. HARTMAN, Burke Building, Seattle,  
Washington,

Attorneys for Defendant and Defendant in  
Error.



*In the United States Circuit Court, Western District  
of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Amended Complaint.**

The above-named plaintiff, the receiver of the property of the Duwamish Mill Company, complains and alleged:

I.

That on the twenty-eighth day of November, 1905, in the city of Seattle, county of King, State of Washington, in an action then pending in the Superior Court in and for the county and State aforesaid, wherein Charles A. Baker was plaintiff, and the Duwamish Mill Company defendant, upon an application made by the said Charles A. Baker and V. H. Faben, and by order duly made by said Court, this plaintiff was appointed receiver of the property of the said Duwamish Mill Company as follows, to wit: Books, records, papers, files, policies of indemnity or insurance, and all other personal property of every kind and description, as well as all choses in action,

and of all corporate property of said Duwamish Mill Company.

## II.

That by said order this plaintiff, as receiver, was further directed and instructed to proceed to collect all outstanding accounts, and sue, if necessary, upon any policy of insurance wherein the said Duwamish Mill Company was insured against claims and damages for injuries sustained by employees in its employ.

## III.

That thereafter, and before the commencement of this action, the plaintiff duly qualified as receiver, and filed the required bond, which bond was approved by said Court and is now on file therein, together with said approval.

## IV.

That the defendant is now, and at all times herein mentioned was, a foreign corporation authorized to do business in this State.

## V.

That in and by its certain policy of insurance, duly signed by its president and secretary, and countersigned by its agent in the city of Seattle, State of Washington, on the 20th day of September, 1914, and delivered to the said Duwamish Mill Company, the defendant herein, the Casualty Company of America, in consideration of the sum of thirty-two and 85/100 dollars, to it then paid by the said Duwamish Mill Company, insured and agreed to indemnify the said Duwamish Mill Company against any loss or damage

by reason of claims brought against it by any of its employees on account of bodily injuries, fatal or non-fatal, accidentally suffered while in the factory, shop or yards in said policy described, as therein and herein specified, during the term of three months from the twentieth day of September, 1904, at noon, to the twentieth day of December, 1904, at noon.

VI.

That on the fifth day of October, 1904, the said Charles H. Baker was injured by reason of the carelessness and negligence of the said Duwamish Mill Company, while he was in the exercise of due care, in the course of his employment under the said Duwamish Mill Company, and in the factory, shop or yards in said policy described, whereby he lost the use of one hand and suffered great bodily and mental injury.

VII.

That thereafter, and on or about the eleventh day of January, 1905, and while still suffering from said injury, the said Charles A. Baker brought suit against the said Duwamish Mill Company in the Superior Court of the State of Washington, for King County, it being a court of general and unlimited jurisdiction in said State, and the defendant, Casualty Company of America, took sole and exclusive charge of the defense of said action, and defended the same throughout to a final judgment in the court of last resort of said State, and appeared in said cause by its attorney, John P. Hartman, who was the sole and only attorney of record in said cause, for the defendant therein.

## VIII.

That thereafter, in said court and cause, such proceedings were had that a trial before a jury was instituted and conducted, and judgment was duly given and made upon the verdict in favor of the said Charles A. Baker and against the said Duwamish Mill Company, in the sum of six thousand dollars, on the eleventh day of September, 1905, which said judgment was signed and regularly entered and made after a motion for new trial was denied, on the twelfth day of October, 1905.

## IX.

That after the entry of said judgment, the Duwamish Mill Company, by and through the said defendant, instigated and prosecuted an appeal to a conclusion, in the Supreme Court, it being the court of last resort in said State of Washington, and after a hearing in said court, judgment was rendered and entered therein on July 20th, 1906, and final judgment, confirming the judgment in said Superior Court against said Duwamish Mill Company and in favor of said Charles A. Baker, was duly rendered, entered and made in said Supreme Court on the eighth day of October, 1906.

## X.

That it was conditioned and provided in said policy that the said defendant would insure the Duwamish Mill Company against all loss from common law or statutory liability for damages on account of bodily injury, fatal or non-fatal, *accidentally* suffered during the term of the policy, by any of the employees of the insured, while within the factory, shop or yards

mentioned in the *policy*, and that the factory, shop or yards of the said insured, wherein the plaintiff was employed, was fully described in said *policy* of insurance.

## XI.

That it was further provided and agreed in said *policy* that "The company's liability for an accident resulting in injuries to, or in the death of, one person, is limited for each person to five thousand dollars, and subject to the same limit for each person, the total liability for any one accident resulting in injuries to, or in the death of several persons, is limited to ten thousand dollars," and "the company shall have the right and opportunity at all reasonable times to examine the books of the assured, so far as they relate to the compensation paid to employees, and the assured shall, whenever requested, furnish the company with a written statement of the amount of such compensation during any part of the *policy* period—under oath, if required; the company or any of its inspectors shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery and appliances used in this business; and may, by written notice, suspend this insurance, until defects or dangerous conditions are remedied to the satisfaction of the company. For the period of suspension, the company will pay a pro-rata return premium."

## XII.

It was further provided in said *policy* that, "If any suit should be brought against the insured to enforce a claim for damages on account of any

casualty covered hereby, that the assured shall cause every summons, process or other papers relating to such suit to be delivered to the company as soon as served on the assured. Upon and after the receipt of such summons or process, the company will, at its own cost, defend the suit in the name and on behalf of the assured or settle the same. The company shall not incur hereunder any liability to the assured for a casualty upon which suit has been brought, unless the assured shall have afforded to the company as hereinbefore provided opportunity to defend such suit." "The company, upon notice and request of the assured, will also provide at the company's expense counsel to represent and defend any and all employees of the assured who may have been subjected to arrest by reason of any casualty for which the company may be liable to the assured hereunder; but this obligation shall not apply save to preliminary hearings or examinations before a magistrate or coroner in the State of New York, and to those preliminary hearings or examinations in other States corresponding thereto."

"The assured shall not interfere in any legal proceedings relating to or growing out of any casualty covered in whole, or in part hereby, nor with negotiations for the settlement of any claim arising from such casualty, nor settle such claim, save at the cost of the assured, nor incur any expense in connection with such casualty, save such as may be necessary in providing at the time of an accident imperative and needful relief; but that the assured, if and whenever requested by the company, shall aid in pro-



curing information, evidence and the attendance of witnesses, if effecting settlements and in prosecuting appeals.”

“The company shall not be liable under this policy unless an action to enforce such liability be brought within sixty days from the date of the entry of a final judgment against the assured, after a trial of the issue on the merits in a suit duly instituted within the period limited by the statute of limitations, awarding damages on account of a casualty covered hereby; and then only provided that such action against the company be brought by the assured personally for damages sustained by the assured in paying and satisfying such final judgment. This clause shall not in any way limit, restrict or abridge the company’s defense to any such action.”

“In case of the payment of a loss under this policy, the company shall be subrogated to all claims and rights of the assured against any person or persons in respect to such loss, and to all judgments or decrees establishing such claims or rights; and the assured shall execute and deliver to the company any and all papers required by it to secure to it the said claims and rights, and shall co-operate with the company to enforce the same.”

### XIII.

That the said Duwamish Mill Company performed all of the conditions, acts and things by it to be done and performed under the terms and conditions of the said policy of insurance, and that the said policy was in full force and effect in every condition and cove-

nant thereof at the time and date of the injury to the said Charles A. Baker.

## XIV.

That on the 25th day of October, 1907, and prior to the commencement of this action, the plaintiff herein, as receiver as aforesaid, under the instructions and directions of said Superior Court of the County of King, State of Washington, issued and delivered to the said Charles A. Baker his Receiver's Certificate in the sum of \$6,764.06, with interest at the rate of six per cent per annum from date until paid, for the purpose of paying and satisfying said judgment as affirmed as aforesaid, which judgment was satisfied of record and received and accepted by the said Charles A. Baker in full settlement, payment and satisfaction of said judgment so as aforesaid, which said Receiver's Certificate constituted a first lien upon all of the property of every nature and description of the said Duwamish Mill Company, and upon the earnings thereof after deducting the operating expenses of the receivership, and said property and earnings were thereby pledged for the payment of principal and interest of said Receiver's Certificate according to its tenor.

## XV.

That by reason of said judgment and the payment and satisfaction thereof the said defendant became and now is indebted unto the plaintiff, as receiver as aforesaid, in the *sum six* thousand dollars, together with interest thereupon at the legal rate from the eighth day of October, 1906, the date upon which



said final judgment was rendered, made and entered, and that no part or portion thereof has been paid.

Wherefore, the plaintiff demands judgment against the defendant in the sum of six thousand dollars, together with interest thereon at the legal rate from October eighth, 1906, and costs of this suit.

V. H. FABEN,  
Attorney for Plaintiff.

State of Washington,  
County of King,—ss.

A. J. Goddard, being first duly sworn, on oath says that he is General Receiver of the Duwamish Mill Company, the plaintiff named in the foregoing complaint, that he has read the same, knows the contents thereof and believes it to be true.

A. J. GODDARD.

Subscribed and sworn to before me this 8 day of February, 1908.

P. V. DAVIS,  
Notary Public in and for the State of Washington  
Residing at Seattle.

Received copy of the within amended complaint and due service thereof admitted this 8th day of Jan'y, 1908.

J. P. HARTMAN,  
Defendant's Atty.

[Endorsed]: Amended Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 13, 1908. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the United States Circuit Court, Western District  
of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Demurrer to Amended Complaint.**

Comes now the said defendant, by its attorneys,  
Kerr and McCord and John P. Hartman, and demurs  
to the amended complaint herein, for the reasons  
and upon the grounds:

I.

That the amended complaint does not state facts  
sufficient to constitute a cause of action against the  
said defendant.

II.

That the action has not been commenced within  
the time limited by law and by the contract sued on.

III.

That the said plaintiff is without legal right to in-  
stitute and maintain a cause of action against the  
said defendant upon the matters set forth in the  
amended complaint.

IV.

That it appears upon the face of the amended

complaint that the said plaintiff has not brought the action within the time limited within the contract upon which he sues, and is therefore barred.

KERR & McCORD and  
JOHN P. HARTMAN,  
Attorneys for Defendant.

I, John P. Hartman, one of the attorneys for the above-named defendant, do hereby certify that I have read the foregoing demurrer and know the contents thereof, and believe that the same is meritorious and well founded in law, and that the same will prevail.

Dated this 11th day of February, 1908.

JOHN P. HARTMAN.

We hereby acknowledge service of the foregoing Demurrer and the receipt of a true copy thereof this eleventh day of Feby., 1908.

C. K. POE,  
Attorney for Plaintiff.

[Endorsed]: Demurrer. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 14, 1908. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the United States Circuit Court for the Western  
District of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY (a  
Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Order Sustaining Demurrer to Amended Complaint.**

This cause coming on this day to be heard, upon the demurrer of the defendant to the amended complaint of the plaintiff filed herein, the said plaintiff being represented by his attorneys, Vince Faben and Poe and Kelleran, and the defendant being represented by its attorneys, Kerr & McCord and John P. Hartman, and after listening to the argument of counsel in open court, and being fully advised in the premises, it is by the court

Ordered, that the said demurrer be, and the same hereby is, sustained.

To the making of the order sustaining the demurrer, the said plaintiff, in open court, excepted, and exception is hereby allowed.

Done in open court this 2d day of March, 1908.

C. H. HANFORD,

Judge.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 2, 1908. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

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*In the United States Circuit Court for the Western District of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Property of the DUWAMISH MILL COMPANY (a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corporation),

Defendant.

### **Judgment.**

This cause coming on this day to be further heard, upon the motion of the defendant herein for judgment of dismissal upon the pleadings and record as made, the said plaintiff being represented by his attorneys, Poe & Kellerman and Vince Faben, and the said defendant being represented by its attorneys, Kerr & McCord and John P. Hartman, and the Court being fully advised in the premises, and the said plaintiff in open court elected to stand upon his amended complaint, and no good cause being shown why judgment should not be entered, and no one opposing the entry thereof, it is by the court

Considered, adjudged and decreed: That the said defendant be, and it hereby is, dismissed hence from

this court, and the said defendant shall have and recover its costs of and from the said plaintiff, and judgment is hereby awarded therefor.

In open court the said plaintiff by his attorneys excepted to the entry of this judgment, and an exception is hereby allowed.

Done in open court this 5th day of March, 1908.

C. H. HANFORD,  
Judge.

[Endorsed]: Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington, Mar. 5, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

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*United States Circuit Court, Western District of  
Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Property of the DUWAMISH MILL COMPANY (a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corporation),

Defendant.

**Assignment of Errors.**

Comes now A. F. Goddard, General Receiver of the property of the Duwamish Mill Company, a corporation, and the plaintiff above named, and in connection with his petition for a writ of error herein makes and files the following assignment of errors upon

which he will rely upon his prosecution of the writ of error in the above-entitled cause from the judgment made by this Honorable Court therein on the —— day of March, 1908, to wit:

1.

That the above-named Court erred in sustaining the demurrer interposed by defendant to plaintiff's amended complaint in said cause filed, in the following particulars:

(a) By holding and deciding that the facts stated in said complaint were not sufficient to constitute a cause of action.

(b) By holding and deciding that the said action was not commenced within the time limited by law and by the contract sued upon.

(c) By holding and deciding that the said plaintiff has no legal right to institute and maintain a cause of action against said defendant upon the matters set forth in his amended complaint.

(d) By holding and deciding that it appears upon the face of the amended complaint that the said plaintiff has not brought his action within the time limited by the contract upon which he sues and it is therefore barred.

2.

That the said Court erred in rendering judgment against the plaintiff in said cause upon the pleadings in said cause, and that said judgment is contrary to law and the facts as stated in the pleading.

Wherefore the said plaintiff and plaintiff in error above named prays that the said judgment be reversed and corrected in the particulars hereinbefore

set out, and such judgment rendered and entered therein as ought to have been made by said Circuit Court.

VINCE H. FABEN,  
POE & KELLERAN,

*Attorney for Plaintiff in Error.*

Due service by copy of above assignment of errors admitted at Seattle this March 5th, 1908.

JOHN P. HARTMAN,  
Atty. of Deft.

[Endorsed]: Assignment of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 5, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

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*In the United States Circuit Court, Western District  
of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corpor-  
ation),

Defendant.

**Petition for Writ of Error, etc.**

Now comes A. J. Goddard, General Receiver of the property of the Duwamish Mill Company, a corporation, and the plaintiff herein, and says:



That on the —— day of —— this Court entered judgment herein in favor of the defendant Casualty Company of America, a corporation, and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will appear in detail from the assignment of errors which are filed with this petition.

Wherefore this plaintiff prays that Writ of Error issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

VINCE H. FABEN and  
POE & KELLERAN,  
Attorneys for Petitioner.

Due service by copy admitted this 5th day of March, 1908, by receipt of above.

JOHN P. HARTMAN,  
Atty. of Deft.

[Endorsed]: Petition for Writ of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 5, 1908. A. Reeve Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court, Western District of  
Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corpora-  
tion),

Defendant.

**Order Allowing Writ of Error, etc.**

Upon motion of Vince H. Faben, Esq., one of the attorneys of record for the plaintiff herein, and upon filing petition for a Writ of Error and an Assignment of Errors, it is

Ordered that a Writ of Error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein, and that the amount of bond on said Writ of Error be, and hereby is, fixed at \$250.00.

Done in open court this 5th day of March, 1908.

C. H. HANFORD,  
Circuit Judge.

[Endorsed]: Order Allowing Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 5, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corpor-  
ation),

Defendant.

**Citation on Writ of Error (Copy).**

United States of America,—ss.

The President of the United States, to Casualty  
Company of America and to John P. Hartman  
and Kerr & McCord, Its Attorneys, Greeting:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be held at the city of  
San Francisco, in the State of California, within  
thirty days from the date of this writ, pursuant to a  
writ of error filed in the Clerk's office of the Circuit  
Court of the United States for the Western District  
of Washington, Northern Division, wherein A. J.  
Goddard, as general receiver of the property of the  
Duwamish Mill Company, a corporation, is plaintiff  
and you are defendant in error, to show cause, if any  
there be, why the judgment in the said writ of error

mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this eleventh day of March, A. D. 1908, and of the Independence of the United States the one hundred and thirty-second.

[Seal]

C. H. HANFORD,

United States District Judge, Presiding in the Circuit Court.

Attest:

A. REEVES AYRES,

Clerk.

By R. M. Hopkins,

Deputy Clerk.

Service of the within citation and receipt of a copy thereof is hereby admitted this 12th day of March, 1908.

KERR & McCORD and

JOHN P. HARTMAN,

Attorneys for Defendant in Error.

[Endorsed]: Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 12, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corpora-  
tion),

Defendant.

**Writ of Error (Copy).**

United States of America,—ss.

The President of the United States, to the Honor-  
able, the Judge of the Circuit Court of the  
United States for the Western District of Wash-  
ington, Northern Division, Greeting:

Because, in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in  
the said Circuit Court before you, or some of you, be-  
tween A. J. Goddard, as General Receiver of the  
property of the Duwamish Mill Company, a corpora-  
tion, plaintiff in error, and Casualty Company of  
America, a corporation, defendant in error, a mani-  
fest error hath happened, to the great damage of the  
said A. J. Goddard, as general receiver of the prop-  
erty of the Duwamish Mill Company, a corporation,  
plaintiff in error, as by his amended complaint ap-  
pears:



Service of within Writ of Error and receipt of a copy thereof is hereby admitted this 12th day of March, 1908.

KERR & McCORD, and  
JOHN P. HARTMAN,  
Attorneys for Defendant in Error.

[Endorsed]: *Writ* of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 12, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

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*United States Circuit Court, Western District of  
Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Bond on Writ of Error.**

Know all men by these presents, that we, A. J. Goddard, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the defendant above-named, in the sum of two hundred and fifty (\$250.00) dollars, to be paid to the said defendant, its successors or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us jointly and sev-

erally, and our and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seals and dated this 11th day of March, 1908.

Whereas the above-named plaintiff has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the Circuit Court of the United States for the Western District of Washington, Northern Division.

Now, therefore, the condition of this obligation is such that if the above-named plaintiff shall prosecute said writ to effect, and shall pay all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to be and remain in full force and virtue.

[Seal]

A. J. GODDARD,

Receiver, as Receiver Duwamish Mill Co.

AMERICAN SURETY COMPANY OF  
NEW YORK,

By LIVINGSTON B. STEDMAN,

Resident Vice-president.

Attest: EDWARD J. LYONS,

Resident Assistant Secretary.

Approved:

C. H. HANFORD,

Judge.

[Endorsed]: Bond. Filed in the U. S. Circuit Court, Western Dist. of Washington, Mar. 11, 1908.  
A. Reeves Ayres, Clerk. A. N. Moore, Dep.



*In the United States Circuit Court, Western District  
of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of DUWAMISH MILL COMPANY (a  
Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Praecipe for Transcript of Record.**

To the Clerk of the Above-named Court:

You will please prepare, certify and forward, as provided by law, a complete transcript of all the files, record and proceedings filed in your office on or before the 6th day of March, 1908, to the United States Circuit Court of Appeals for the Ninth Circuit, as the record on appeal from the Circuit Court of the United States for the Western District of Washington, Northern Division:

Amended Complaint;

Demurrer to Amended Complaint;

Order Sustaining Demurrer;

Judgment Dismissing;

Assignment of Errors;

Petition for Writ of Error;

Allowance of Writ of Error;

Citation;

Writ of Error;

Bond on Appeal, and

This Praecept.

This Praecept filed this 6th day of March, 1908.

VINCE H. FABEN.

POE & KELLERAN.

[Endorsed]: Praecept for Transcript of Record. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 11, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

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*In the Circuit Court of the United States for the Western District of Washington, Northern Division.*

No. 1638.

A. J. GODDARD, as General Receiver of the Property of DUWAMISH MILL COMPANY (a Corporation),

Plaintiff and Plaintiff in Error,

vs.

CASUALTY COMPANY OF AMERICA (a Corporation),

Defendant and Defendant in Error.

**Clerk's Certificate to Transcript of Record.**

United States of America,

Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Wash-

ington, do hereby certify the foregoing thirty-two (32) typewritten pages, numbered from 1 to 32, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as is called for by the praecipe of the attorneys for the plaintiff and plaintiff in error, as the same remain of record and on file in the office of the Clerk of the said Court, and that the same constitute the record on appeal from the Circuit Court of the United States for the Western District of Washington, and as the return to the annexed Writ of Error, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I annexed hereto and herewith transmit the Original Citation and Writ of Error.

I further certify that the cost of preparing and certifying the foregoing record on appeal and return to Writ of Error is the sum of \$22.30, and that the said sum has been paid to me by Vince H. Faben and Poe & Kellernan, attorneys for plaintiff and plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this the 17th day of April, A. D. 1908.

[Seal]

A. REEVES AYRES,

Clerk.

By R. M. Hopkins,

Deputy Clerk.

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 1638.

A. J. GODDARD, as General Receiver of the Prop-  
erty of DUWAMISH MILL COMPANY (a  
Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Cor-  
poration),

Defendant.

**Citation on Writ of Error (Original).**

United States of America,—ss.

The President of the United States, to Casualty Com-  
pany of America, and to John P. Hartman and  
Kerr & McCord, Its Attorneys, Greeting:

You are hereby cited and admonished to be and ap-  
pear at the United States Circuit Court of Appeals  
for the Ninth Circuit, to be held at the city of San  
Francisco, in the State of California, within thirty  
days from the date of this writ, pursuant to a writ  
of error filed in the clerk's office of the Circuit Court  
of the United States for the Western District of  
Washington, Northern Division, wherein A. J. God-  
dard, as general receiver of the property of the  
Duwamish Mill Company, a corporation, is plaintiff  
and you are defendant in error, to show cause, if any  
there be, why the judgment in the said writ of error

mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this eleventh day of March, A. D. 1908, and of the independence of the United States the one hundred and thirty-second.

C. H. HANFORD,  
United States District Judge, Presiding in the Circuit Court.

[Seal] Attest: A. REEVES AYRES,  
Clerk.

By R. M. Hopkins,  
Deputy Clerk.

Service of the within citation and receipt of a copy thereof is hereby admitted this 12th day of March, 1908.

KERR & McCORD and  
JOHN P. HARTMAN,  
Attorneys for Defendant in Error.

[Endorsed]: 1638. United States Circuit Court of Appeals, for the Ninth Circuit. A. J. Goddard, as General Receiver of the Property of the Duwamish Mill Company, a Corporation, vs. Casualty Company of America, a Corporation. Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 12, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep. Vince H. Faben and Poe & Kelleran, Attys. for Plaintiff.

*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 1638.

A. J. GODDARD, as General Receiver of the Property of DUWAMISH MILL COMPANY (a Corporation),

Plaintiff,

vs.

CASUALTY COMPANY OF AMERICA (a Corporation),

Defendant.

**Writ of Error (Original).**

United States of America,—ss.

The President of the United States, to the Honorable, the Judge of the Circuit Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between A. J. Goddard, as General Receiver of the Property of the Duwamish Mill Company, a corporation, plaintiff in error, and Casualty Company of America, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said A. J. Goddard, as general receiver of the property of the Duwamish Mill Company, a corporation,

plaintiff in error, as by his amended complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 10th day of April, 1908, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the eleventh day of March, in the year of our Lord one thousand nine hundred and eight.

A. REEVES AYRES,

Clerk of the United States Circuit Court for the Ninth Circuit, Western District of Washington, Northern Division.

By R. M. Hopkins,  
Deputy Clerk.

Allowed by:

[Seal]

C. H. HANFORD,  
District Judge.

Service of within writ of error and receipt of a copy thereof is hereby admitted this 12th day of March, 1908.

KERR & McCORD and  
JOHN P. HARTMAN,  
Attorneys for Defendant in Error.

[Endorsed]: 1638. United States Circuit Court of Appeals, for the Ninth Circuit. A. J. Goddard, as General Receiver of the Property of the Duwamish Mill Company, a Corporation, vs. Casualty Company of America, a Corporation. Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar 12, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep. Vince H. Faben and Poe & Kelleran, Attys. for Plaintiff.

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[Endorsed]: No. 1599. United States Circuit Court of Appeals for the Ninth Circuit. A. J. Goddard, as General Receiver of the Property of the Duwamish Mill Company (a Corporation), Plaintiff in Error, vs. The Casualty Company of America (a Corporation), Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division.

Filed May 1, 1908.

F. D. MONCKTON,  
Clerk.



At a stated term, to wit, the September Term, A. D. 1908, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Courtroom in the City of Seattle, in the State of Washington, on Tuesday, the fifteenth day of September, in the year of our Lord one thousand nine hundred and eight. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 1599.

A. J. GODDARD, as General Receiver of the Property of the DUWAMISH MILL COMPANY  
(a Corporation),

Plaintiff in Error,

vs.

THE CASUALTY COMPANY OF AMERICA (a Corporation),

Defendant in Error.

**Order Making Stipulation Relative to a Part of the Record.**

Upon motion of Mr. C. K. Poe, counsel for the plaintiff in error, it is ordered that the stipulation of counsel relative to institution of action, etc., may be filed and made a part of the record herein.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 1599.

A. J. GODDARD, as General Receiver of the Prop-  
erty of the DUWAMISH MILL COM-  
PANY (a Corporation),

Plaintiff in Error,

vs.

THE CASUALTY COMPANY OF AMERICA (a  
Corporation),

Defendant in Error.

**Stipulation Relative to Institution of Action, etc.**

It is hereby stipulated between the parties hereto, by their attorneys undersigned, that this action was instituted by the plaintiff against the defendant on the 15th day of November, 1907, and within sixty days from the issuance of the receiver's certificate in plaintiff's amended complaint set out.

It is further agreed that this stipulation may be made a part of the transcript of record on the appeal of this cause subject to the approval of the above-entitled court.

VINCE H. FABEN,  
POE & KELLERAN,  
Attorneys for Plaintiff in Error.

KERR & McCORD, and  
JOHN P. HARTMAN,  
Attorneys for Defendant in Error.

[Endorsed]: Original. No. 1599. In the Circuit Court of Appeals for the Ninth Circuit. A. J. Goddard, Plaintiff, vs. The Casualty Co. of America, Defendant. Stipulation Relative to Institution of Action, etc. Filed Sep. 14, 1908. Frank D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

